HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.12861 of 2007

Dated:16-11-2007

Between:

U.V.K.Subba Rao
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AND

Greater Hyderabad Municipal Corporation,
rep by its Dy.Commissioner,
Hyderabad.
And others.

.....Respc

Counsel for the petitioner : Sri M.V.S.Suresh Kumar.

Counsel for the respondents : A.G.P. for Land Acquisition.

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HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.12861 of 2007

O R D E R:

This writ petition is filed to quash notice dated 7.4.2007 issued by respondent No.1 whereby application of the petitioner for building permission is rejected.

The petitioner claims to be the owner and possessor of an extent of 359 sq.yards in survey No.44/1, Miyapur village, Serlingampally Municipality having purchased the same from M/s.Matrusri Co-operative House Building Society Limited. The petitioner alongwith some other members of the said society approached the erstwhile Serlingampally Municipality (now merged in Greater Hyderabad Municipal Corporation) for grant of building permission. The Serlingampally Municipality issued the memo which is impugned in this writ petition whereunder the petitioner's request for sanction of building permission is rejected in view of the pendency of land grabbing case registered as L.G.C.No.29 of 2006 in respect of larger extent of land which includes the land over which the petitioner is seeking to construct building.

After receipt of notice, respondent No.1 filed a counter affidavit in which while reiterating the reason for rejection of the petitioner's request for grant of building permission it is however, admitted that some permissions were accorded earlier, to other similarly situated persons, before the Revenue Divisional Officer, Chevella and the Vice Chairman, HUDA raised objections to grant of permission in view of the pendency of LGC.

Sri M.V.S.Suresh Kumar, the learned counsel for the petitioner

invited my attention to the Division Bench Judgment of this Court dated 23.3.2007 in W.P.No.3973 of 2007 and Batch. The case before the Division Bench arose out of an interlocutory order passed by the Special Court constituted under The Land Grabbing (Prohibition) Act 1982 whereunder injunction granted in favour of the State was modified directing that the State shall not interfere with the right of the persons to raise constructions in accordance with the plans already approved and that constructions already made shall not be demolished. The Division Bench observed in the said order the Special Court has specifically held to the effect that the respondent before it and its predecessors-in-title had been in possession for long time, i.e., more than 60 years and development activities are going on ever since then, that it is also not in dispute that number of buildings have been constructed in the portion of the land in question, lay-outs applied for have been sanctioned, a cinema theatre is functioning as on that day and that contentions regarding title and interpretation of entries made in the revenue records have to be considered and decided after full-fledged trial in the case by giving opportunity to both the parties and that the same cannot be decided at this stage. After taking note of the said observations of the Special Court, the Division Bench found that the prima facie case and balance of convenience were against the State and further observed that the Special Court ought not to have shown any distinction between the owners who have already obtained permissions and others who have not obtained such permissions. The Division Bench thus dismissed the application filed by the State for injunction before the Special Court with the obseration that alienations if any, made pending LGC are always subject to the result of the said case.

Having regard to the fact that no injunction is subsisting against the petitioner or the society from whom the petitioner had purchased the property, I do not see any justification for respondent No.1 to reject the building permission merely for the reason that a land grabbing case is pending in respect of the land of which the petitioner's land forms part. In

the event the LGC goes against the petitioner and the society, it is always open to the State to recover the property.

Therefore, in the absence of any legal bar for granting building permission subject to the petitioner satisfying the requirements of section 428 of the Hyderabad Municipal Corporation Act 1955, the petitioner is entitled to grant of building permission. However, in the event of LGC case, which is pending before the Special Court, being decided against him, the petitioner shall not claim equities or compensation for cost of the building constructed by him. The respondents shall accordingly consider the application of the petitioner for granting building permission.

The writ petition is allowed to the extent indicated above.

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C.V.NAGARJUNA REDDY,J

Date:16.11.2007
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